STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0264

Alisa Ta,
Respondent,

vs.

Ryan Rentals LLC,
Appellant.

Filed September 13, 2021
Affirmed
Ross, Judge

Olmsted County District Court
File No. 55-CV-20-5755

Brian J. Wisdorf, Robert B. Bauer, Dougherty, Daniel R. Spicer, Molenda, Solfest, Hills & Bauer P.A., Apple Valley, Minnesota (for respondent)

Courtney R. Sebo Savica, Holm E. Belsheim, Wendland Utz, Ltd., Rochester, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

This case arises from a dispute over a landlord's entry into a tenant's apartment without notice after the tenant attempted to end her lease early. Alisa Ta informed her landlord that she wanted to terminate her residential lease, and she continued paying her rent after her landlord, Ryan Rentals, refused to terminate or allow her to sublease the unit.

Her landlord's agent entered the apartment without providing Ta advance notice required by statute. Ta sued Ryan Rentals for the unnoticed entry, and the district court fined Ryan Rentals. In this appeal from that decision, we reject as legally erroneous Ryan Rentals' contention that the district court abused its discretion by determining that the entry violated the statute, and we reject as factually flawed its assertion that the district court imposed the penalty *sua sponte*. We therefore affirm.

FACTS

This case arises from a dispute over a tenant's attempt to end her residential lease early and her landlord's entry into the apartment without notice. Respondent-tenant Alisa Ta and appellant-landlord Ryan Rentals LLC entered into a year-long lease of a Rochester apartment in May 2020, but Ta told Ryan Rentals on August 23, 2020, that she wanted to sublease the apartment. Ryan Rentals refused. Its property manager went to the apartment on August 27, speculating wrongly that Ta had moved out and that someone else had moved in. Ta met the manager at the apartment door after he aggressively knocked on it, and the two argued. The manager left, and later that day Ta sent him an email stating that his behavior put her in fear and that she "will now be out of th[e] apartment on the first or as soon as possible."

Ta continued to pay rent despite her statement that she would "be out" on September 1. Two days later, the manager again went to the apartment. He forced the door open by breaking the lock. He discovered that Ta had moved all her things out and had left behind the apartment keys.

Ta sent Ryan Rentals a letter asserting that it had violated Minnesota law when its manager entered the apartment without permission on August 27 "and separate occasions." She asked Ryan Rentals to release her from the lease. Ryan Rentals refused, asserting that Ta had forfeited her security deposit and threatening to sue her for the rent covering the balance of the lease period as well as late fees, court costs, and attorney fees. Ta sued, alleging that Ryan Rentals violated her statutory rights by entering the apartment without notice, and Ryan Rentals filed a counterclaim, alleging that Ta had breached the lease agreement by terminating early.

The district court considered the parties' stipulated evidence, including the lease, text messages and email messages between Ta and Ryan Rentals' property manager, and the parties' September 2020 letter exchange. The district court held that Ryan Rentals substantially violated Minnesota Statutes section 504B.211, subdivision 2 (2020), by entering the apartment without notice on September 3. It ordered the lease terminated at the end of September, and it awarded Ta a $100 civil penalty, her security deposit, and attorney fees totaling $3,373.81.

Ryan Rentals appeals.

DECISION

Ryan Rentals challenges the district court's decision on two grounds. It argues first that the district court erroneously concluded that it "substantially violated" the entry prohibition in Minnesota Statutes section 504B.211 (2020) by entering Ta's apartment without notice. Ryan Rentals admits that it violated the prohibition but postulates that only a *substantial* violation can be penalized. Ryan Rentals argues second that, even if its

entrance substantially violated the prohibition, the district court improperly fined it because the court imposed the penalty based on the September 3 entry *sua sponte*, without adequate notice. Both arguments fail.

We first address Ryan Rentals' legal argument about the degree of violation necessary to trigger a penalty for a landlord's unnoticed entry into a tenant's apartment. The argument requires us to interpret section 504B.211. We interpret statutes de novo. *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017). When we interpret a statute, we give effect to its plain, unambiguous language. *Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 285 (Minn. 2016). Subdivisions 2 and 6 include the language at issue in this appeal. The former establishes the prohibition:

> Except as provided in subdivision 4, a landlord may enter the premises rented by a residential tenant only for a reasonable business purpose and after making a good faith effort to give the residential tenant reasonable notice under the circumstances of the intent to enter.

Minn. Stat. § 504B.211, subd. 2. And the latter establishes the penalty:

> If a landlord substantially violates subdivision 2, the residential tenant is entitled to a penalty which may include a rent reduction up to full rescission of the lease, recovery of any damage deposit less any amount retained under section 504B.178, and up to a $100 civil penalty for each violation.

Id., subd. 6.

Ryan Rentals contends that it had a reasonable business purpose to enter on account of Ta's "abandon[ment]" of the apartment. The apparent weakness in the contention is that, although the statute identifies abandonment as a reasonable business justification to enter, *id.*, subd. 3(9), Ryan Rentals did not know that Ta had moved her things out until after the

manager broke in. And in any event, by continuing to receive scheduled rent payments, Ryan Rentals had no reasonable ground on which to claim abandonment. But its assertion of a business reason for entry is mostly an aside, however; the statute requires both a reasonable justification for entry and a landlord's good-faith effort to notify the tenant beforehand, and Ryan Rentals does not dispute that it failed to make any effort to notify Ta of its intent to enter.

Conceding that its unnoticed entry violated the express prohibition in subdivision 2, Ryan Rentals argues for reversal on the theory that a simple violation, by itself, is not enough to authorize the district court to impose a penalty. It proffers that the conditional phrase, "[i]f a landlord substantially violates subdivision 2," allows for a penalty only if the landlord engaged in "egregious" conduct that reflected "a heightened level of severity, intrusion, or impact" to the tenant's right to privacy. In other words, it reads "substantially" as an intensifier, so that "*substantially* violated" means *really* violated. It implies that we should deem identical the terms substantially violated and substantial violation. We reject the argument as grammatically and logically unsound.

The argument misses the difference between the adverb *substantially* and the adjective *substantial* in common legal usage. *Substantially* ordinarily implies an action that is not exactly the same but is functionally equivalent to the action the adverb modifies. In contrast, *substantial* tends to imply a particularly emphatic version of the thing the adjective modifies. This customary distinction is evident in both caselaw and statutes.

Regarding *substantially*, for example, the supreme court has used the adverb as one might use the terms largely, essentially, generally, to a similar extent, or basically. *See*

Carrier v. Minneapolis St. Ry. Co., 221 N.W. 244, 245 (Minn. 1928) ("Aside from this bit of testimony given by plaintiff the witnesses all substantially agree as to the occurrence."); *O. B. Thompson Elec. Co. v. Milliman & Larson, Inc.*, 128 N.W.2d 751, 754–55 (Minn. 1964) ("Although the answer was labeled as a 'proposed' answer, it nevertheless stated a complete demand for the relief to which petitioner was entitled as a lienholder and substantially complied with the [statutory] provisions."); *State v. Robinson*, 427 N.W.2d 217, 223 n.4 (Minn. 1988) ("We note this procedure was not specifically enunciated in *Howard*. However, this rule was substantially followed in that case."). The legislature treats the adverb likewise. For example, it prohibits a brewer from canceling an agreement with a wholesaler unless the brewer has good cause for cancelling, and good cause includes the wholesaler's failure to "substantially comply" with the brewer's reasonable requirements. Minn. Stat. § 325B.04, subds. 1, 2(a)(4) (2020). The legislature requires the commissioner of human services to notify an aspiring residential-care operator how to remedy an incomplete license application and allow the applicant to submit a new, "substantially complete" application. Minn. Stat. § 245A.04, subd. 1(a) (2020). And the legislature directs district courts to dismiss criminal indictments that do not "substantially conform" to the prescribed application requirements. Minn. Stat. § 630.18 (2020).

Regarding *substantial*, the supreme court has by contrast used the adjective to describe a thing as being especially significant, grievous, weighty, or severe. *See, e.g.*, *In re Disciplinary Action Against Giberson*, 581 N.W.2d 351, 354 (Minn. 1998) ("[W]e conclude that respondent's willful failure to obey court orders was prejudicial to the administration of justice and caused substantial injury to respondent's ex-wife and

children."); *State v. Castillo-Alvarez*, 836 N.W.2d 527, 543 (Minn. 2013) ("Whether the *Scales* violation requires suppression of Castillo–Alvarez's statement turns on whether the failure to record the statement was a substantial violation of the *Scales* rule."); *Jacobsen v. Anheuser-Busch, Inc*., 392 N.W.2d 868, 872 (Minn. 1986) (explaining that a law's "severity of the impairment" to contract will increase the court's scrutiny and that a "substantial impairment" warrants heightened scrutiny). The legislature treats the adjective similarly. For example, the legislature authorizes greater criminal penalties for child neglect that results in "substantial harm" to the child. Minn. Stat. § 609.378, subd. 1 (2020). It authorizes officials to immediately remove an altered, nonconforming advertisement along a highway if the sign alteration reflects a "substantial change." Minn. Stat. § 173.265, subd. 5 (2020). And it requires every mortgage originator who charges excessive prepayment fees to warn borrowers that they face a "substantial penalty" for prepaying the loan. Minn. Stat. § 58.137, subd. 2(b) (2020).

Although one can find some exceptions to this general distinction between these terms, the context will make the different meaning clear. *See, e.g.*, Minn. Stat. § 634.20 (2020) ("Evidence of domestic conduct by the accused against the victim of domestic conduct . . . is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice . . . ."). Nothing in section 504B.211 suggests that by using the phrase "substantially violates [the entry prohibition]" the legislature meant to authorize the district court to penalize only those apartment entries that are somehow more intrusive or shocking than others. To the contrary, the context informs us that the legislature predicted

that some intrusions might be merely technical, minor violations but would nevertheless subject the landlord to being penalized within the district court's discretion.

We add that even if Ryan Rentals' proposed meaning of "substantially violates" was convincing, we would likely still affirm the penalty. After hearing from Ta that she no longer felt safe in the apartment because of the manager's aggressive attempt to enter on August 27 and then having made no attempt to inform Ta of his intent to enter, the manager literally broke into Ta's leased apartment a week later without knowing beforehand that she had removed her possessions and was not inside. We would call that an "egregious" violation of the prohibition against unnoticed entry, if that were the standard. That is, even if the statute required a *substantial violation* rather than merely conduct that *substantially violates* the prohibition, Ryan Rentals would not prevail on appeal.

Ryan Rentals argues that the district court abused its discretion by imposing the statutory penalty *sua sponte*, without notice. Ironic. But we need not decide whether the district court is prohibited from *sua sponte* imposing a section 504B.211 penalty, because, contrary to Ryan Rentals' assertion, the record unquestionably establishes that Ryan Rentals was on notice that the district court would address whether the September 3 entry violated the unnoticed-entry prohibition. Ta's September letter specifically stated that its purpose was to "give statutory notice of violations by Ryan Rentals, LLC of Minnesota Statutes § 504B.211." The letter did not limit Ta's allegation to the August 27 encounter, asserting also that "upon information and belief, [Ryan Rentals' manager] has entered the Premises on separate occasions without Ms. Ta's presence and without prior notice." Ryan Rentals responded by describing and attempting to justify its unnoticed September 3 entry,

claiming it had complied with Minnesota law. And Ta also raised the issue in her civil complaint, alleging that "[Ryan Rentals] has violated Minnesota law by entering the Premises without advance reasonable notice as required by Minnesota Statutes § 504B.211" and that "[Ta] . . . properly notified Defendant of the violations." Her complaint added, "Defendant has caused the destruction of the front door of the Premises and has overtaken possession of the Premises." Finally, the statute limits the civil penalty to $100 per violation and Ta requested "$200, which represents the estimated damages for each violation committed by [Ryan Rentals] via unauthorized entry pursuant to Minn. Stat. § 504B.211." Ryan Rentals' answer also demonstrated that it was on notice of Ta's objection to the September 3 entry, saying, "To the extent [Ta] alleges that Ryan Rentals entered the apartment at any other time [besides August 27], Ryan Rentals denies [it]." Ryan Rentals was on actual notice and acknowledged that Ta was urging the district court to penalize it for the September 3 entry. We therefore reject as unfounded its argument that the district court decided *sua sponte* to penalize it.

Affirmed.